

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

02/14/2002

CLERK OF THE COURT
FORM R000A

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2000-000467

FILED: _____

STATE OF ARIZONA

ROBERT KENT MCCARTHY

v.

SUZANNE M NOONAN

NEAL W BASSETT

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

RULING
AFFIRM/REMAND

PHOENIX CITY COURT

CIT. NO: 8929040

CHARGE: PROSTITUTION

DOB: 08-14-1964

DOC: 08-18-1999

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on January 16, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings before the Phoenix City Court and the memoranda submitted by counsel.

Appellant, Suzanne M. Noonan, was charged with the crime of prostitution, a class 1 misdemeanor offense, in violation of Phoenix City Code Section 23-52(a)(1). The complaint alleged that Appellant had been previously convicted twice of the same crime. Appellant was found guilty after a jury trial. Appellant was first sentenced on July 17, 2000. On appeal, in a decision dated April 16, 2001, the Honorable Frank Galati of this court affirmed Appellant's conviction but vacated the sentence and remanded back to the Phoenix City Court for a trial on Appellant's prior convictions. On July 31, 2001, Appellant appeared with counsel before the Phoenix City Court for a trial on her prior convictions. The trial judge found the allegation of prior convictions to be true and sentenced Appellant accordingly to the mandatory minimum of 60 days in jail. Appellant has filed a timely Notice of Appeal in this case.

On appeal, Appellant makes the interesting argument that though the prosecution proved by fingerprint identification evidence that Appellant was the person in court and the person with the two prior convictions, the prosecution did not prove that Appellant was also the person convicted April 25, 2000.

It is important to this Court to note that on July 31, 2001, Appellant identified herself through counsel as being present for sentencing. No claim was made by Appellant or her counsel that she was not the person who was previously found guilty after a jury trial of the crime of prostitution. In fact, Appellant's identity as the person who was convicted in April of 2000 was not an issue until closing arguments on the trial on the priors by Appellant's counsel. Generally, a

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failure to object constitutes a waiver of that issue on appeal.¹ Appellant did not claim she was someone other than the person who was convicted in April of 2000. The identity of the Defendant in the April 2000 trial was established during that trial as Appellant in this case. The State was not required to prove that fact over again in the subsequent trial on the prior convictions. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

¹ See State v. Gilreath, 107 Ariz. 318, 487 P.2d 385 (1971).
Docket Code 512